

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application)

of)

WAI'OLA O MOLOKA'I, INC.)

For review and approval of rate)
increases; revised rate schedules; and)
revised rules.)
_____)

Docket No. 2009-0049

PUBLIC UTILITIES
COMMISSION

2009 FEB - 3 P 3: 32

FILED

**MOTION TO DISMISS
COUNTY OF MAUI AS AN INTERVENOR**

**MEMORANDUM IN SUPPORT OF MOTION
TO DISMISS COUNTY OF MAUI AS AN INTERVENOR**

and

CERTIFICATE OF SERVICE

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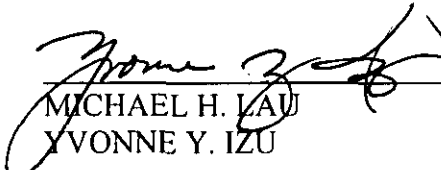
MOTION TO DISMISS
COUNTY OF MAUI AS AN INTERVENOR

WAI'OLA O MOLOKA'I, INC., by and through its attorneys, Morihara Lau & Fong LLP, moves to dismiss the County of Maui as a party in this docket.

This motion is made pursuant to and in accordance with Hawaii Administrative Rules § 6-61-41, and is supported by the attached Memorandum in Support of Motion.

No hearing is requested on this motion.

DATED: Honolulu, Hawaii, February 3, 2010.



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MEMORANDUM IN SUPPORT OF MOTION
TO DISMISS COUNTY OF MAUI AS AN INTERVENOR

In granting the County of Maui's ("County") Motion to Intervene, the Public Utilities Commission stated:

[T]he commission will reconsider the County's . . . intervention in this docket if, at any time during the course of this proceeding, the commission determines that the County . . . is unreasonably broadening the pertinent issues or unduly delaying the proceeding. . . .

In addition, the County [is] reminded that [it] must comply with the commission's Rules of Practice and Procedures as set forth in HAR Chapter 6-61 and all commission orders and requirements during the course of this proceeding.

Order Granting the Motions to Intervene Filed by the County of Maui and Stand For Water, filed October 16, 2009, pp. 20-21.

To date, the County has (1) attempted to unreasonably broaden the issues by submitting overly broad and irrelevant information requests to Wai'ola O Moloka'i, Inc. ("WOM"); and (2) after requesting and obtaining an extension of time to file direct testimony, failed to contribute to the development of a sound record and to meaningfully participate in this proceeding by failing to file any direct testimony, thereby not following

the Commission's Order Approving Proposed Procedural Order, as Modified, filed on November 6, 2009 (hereafter "Procedural Order"). Moreover, the County's actions to date indicate the County intervention in this proceeding will not be meaningful and contribute to the development of the sound record. To the contrary, the County's continuing status as an intervenor will likely result in a protracted hearing and undue delay of the proceeding.

For these reasons, WOM respectfully requests that the Commission dismiss the County of Maui as an intervenor.

A. County's Attempt to Unreasonably Broaden Issues

The County submitted 20 information requests (IRs) to WOM on November 12, 2009. Of the 20 IRs, WOM objected to ten (50%) as being irrelevant and or unduly broadening the issues in the case. In subsequent filings (i.e., supplemental IRs), the County did not attempt to narrow the scope of the information requests to which WOM objected, nor has the County challenged WOM's objections. County of Maui's Supplemental Information Requests to Wai'ola O Moloka'i, Inc., filed December 9, 2009.

Additionally, in attempting to unreasonably broaden the issues, the County disregarded the Commission's ruling on the issues pertinent to this proceeding. The County had declined to join with WOM, the Consumer Advocate, and Molokai Properties Limited (MPL) in stipulating to a procedural order. Instead, the County filed its own proposed procedural order, which, among other things, expanded the statement of the issues. *Exhibit A to County of Maui's Proposed Procedural Order, filed October 28, 2009.* The Commission either rejected outright, or rejected as unnecessary because

implicitly incorporated within the issues as set forth by the stipulating parties, all of the County's modifications to the statement of issues. One of the issues proposed by the County that was rejected outright by the Commission was the following:

- (i) Whether WOM should receive a rate increase given the manner in which WOM's issued and outstanding voting stock is held and whether PUC approval had been obtained.

Procedural Order, at p. 4.

Notwithstanding the PUC's holding that this was not an issue pertinent to the case, the County nevertheless asked WOM for "[c]orporate records reflecting the issuance of stock certificates to any person or entity, the dates of issue, the consideration paid or promised for the stock, and the date(s) on which the consideration was paid or promised." County-IR-4.

Subsequently, notwithstanding WOM's objection that the IR was outside of the scope of issues for this proceeding, the County proceeded to present the identical IR to MPL. See County-IR-103 filed on January 22, 2010.

B. County Fails to File Direct Testimony

Despite having asked for, and been granted, a one week extension of time to January 13, 2010, to file its direct testimonies and exhibits, the County filed a statement that it

would not be filing direct testimony in this proceeding and instead intends to establish, through cross-examination of witnesses and exhibits, that the proposed rate increases by Wai'ola O Moloka'i, Inc. ("WOM") are unreasonable and unjust.

County of Maui's Statement Regarding Direct Testimony, filed on January 13, 2010.

Because the County refused to file direct testimony, WOM is foreclosed from "Submission of IRs to [the County] on Direct Testimonies and Exhibits" in accordance

with the Stipulated Regulatory Schedule incorporated in the Procedural Order. Further, WOM does not have any way of knowing which components of the rate proposal the County has objections to, thereby precluding settlement discussions¹ and the ability to narrow the issues prior to hearing.

More importantly, as the Commission noted in the Order Dismissing Stand For Water As An Intervenor in this case, “[w]ithout . . . timely direct testimonies and exhibits, [the County] has failed to present any evidence or arguments to which WOM may have the opportunity to rebut as part of the water utility’s forthcoming rebuttal testimonies and exhibits.” Order Dismissing Stand For Water As An Intervenor, filed January 27, 2010, at p. 3.

It should be noted that in its motion to intervene, the County stated that because it relies upon WOM for firefighting purposes and maintaining the County’s public parks, “a substantial and exorbitant rate increase as proposed by Wai’ola. . . will have a significant impact on the County as a customer.” County of Maui’s Motion to Intervene, filed on September 11, 2009, at p. 8. It is difficult to imagine how the County plans to inform the Commission of the impact that the proposed rate increase would have on the County without direct testimony and relying only on cross-examination. Having no testimony from the County on an issue that the County identified as a basis for intervention places WOM in a very awkward and difficult position of having to guess what the County may spring on the utility during the hearing.

¹ Settlement discussions with the Consumer Advocate will be significantly hampered as the parties have no idea as to the County’s positions or even its primary areas of concern. It would be inefficient for the Consumer Advocate and WOM to resolve their differences on some items only to have to go through a full hearing process on the agreed upon items at the County’s behest.

Similarly, to persuade the commission to grant its motion for intervention, the County stated that it “will . . . be able to provide much needed context to the underlying issues which form the bases for Wai’ola’s and MPU’s requests for a rate increase.” County of Maui’s Motion to Intervene, at p. 11. To date, the County has failed to do so, and it is difficult to understand how the County intends “to provide that much needed context” without filing any testimony, without having any of its own witnesses, and relying solely on cross-examination.²

C. County’s Intervention Likely to Result in Protracted Hearing and Undue Delay

The County’s actions to date in this proceeding clearly indicate that its continued status as an intervenor will result in a protracted hearing and cause undue delay in bringing a conclusion to this case.

As noted above, the County’s refusal to file testimony precludes settlement discussions and the ability to narrow the issues prior to hearing. The County’s statement that it would be relying solely on cross-examination to make its case certainly gives the impression that the parties should expect a protracted hearing. If it is the County’s purpose to not provide WOM an opportunity for written rebuttal, but to “surprise” WOM at the hearing, there is a good probability that the hearing may have to be recessed to allow WOM to gather the evidence it needs (including, but not limited to, locating an appropriate witness) to respond to cross-examination or provide rebuttal testimony.

Other actions taken by the County in this proceeding add to the concern that this proceeding will be unnecessarily protracted. Two incidents have already been noted

² Analogous to this, the Commission, in dismissing Stand For Water (“SFW”) as an Intervenor, noted that SFW, in its motion to intervene, had listed seven “expert” witnesses on its behalf, but then failed to file any testimony. Order Dismissing Stand For Water As An Intervenor, at p. 3.

above: (1) The County asked for, obtained WOM's concurrence, and the Commission's permission, to extend the time for filing direct testimony, only to state that it will not file direct testimony. (2) Ignoring the Commission's order rejecting the issue of voting stock as not being pertinent to the case, the County proceeds to issue an IR on this issue; then, notwithstanding WOM's objection to this IR as irrelevant and unreasonably broadening the issues, the County proceeds to issue the same IR to MPL.

Indeed, the IRs issued by the County suggest that very little thought went into tailoring the IRs to this particular proceeding and the facts set forth in WOM's application. The County's IRs to WOM simply repeat the IRs to Molokai Public Utilities, Inc. ("MPU"), including questions relating to Well 17 and use of the Molokai Irrigation System, facilities pertinent to MPU, but not to WOM. Additional examples include County-IR-5, which requested "[f]inancials, including WOM's audited financial statements. If none exist, then provide all unaudited financials for the period January 2000 to the present." And County-IR-10 asked for "[a]ll documents, evidencing loans, notes payable, or loans guaranteed by MPL for the benefit of WOM for the period January 2000 to the present." Had the County done even a cursory review of WOM's amended application, these IRs would not have been asked because Exhibit WOM-2 clearly provided the answers.

Furthermore, the SIRs issued by the County were not follow-up questions to WOM's responses to the initial set of IRs, but were in the nature of original IRs. In other

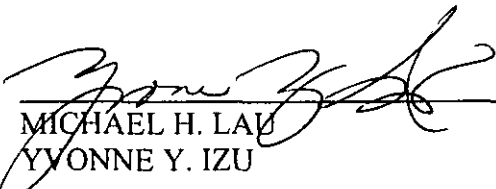
words, the County simply used the SIR portion of the Stipulated Regulatory Schedule to extend the period of time for filing IRs.³

Although the County's actions have not yet caused undue delay in the proceedings, they have caused WOM's consultant and legal counsel to expend time and effort (and, therefore, increased regulatory expenses) perhaps unnecessarily. Moreover, the County's actions to date suggest a callous disregard for the Commission's procedures, practices, and orders, which is likely to result in an undue amount of procedural issues raised during the hearing. Added to the fact that there is no opportunity for narrowing the disputed issues, WOM is gravely concerned that the County's continued role as an intervenor in this case will result in unduly protracted hearings and possible delay in the schedule.

D. Conclusion

Based on the foregoing, WOM respectfully requests that the Commission revisit its Order granting Maui County's Motion to Intervene and dismiss the County of Maui as an intervenor.

DATED: Honolulu, Hawaii, February 3, 2010.



MICHAEL H. LAU
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Attorneys for WAI'OLA O MOLOKA'I,
INC.

³ WOM considered, but in the end decided against, objecting to the County's SIRs in the interest of providing relevant information for the record, and because raising objections potentially could result in incurring more legal costs and delay.

CERTIFICATE OF SERVICE

I (we) hereby certify that copies of the foregoing document were duly served on the following parties, by having said copies to be mailed, postage prepaid, properly addressed, or hand delivered, to the following:

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Division of Consumer Advocacy
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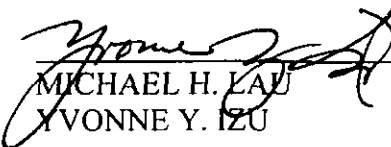
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DATED: Honolulu, Hawai'i, February 3, 2010.


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